

Message

From: Roseann Kachadoorian [rkachadoorian@oda.state.or.us]
Sent: 8/11/2021 12:41:50 PM
To: Maignan, Tawanda [Maignan.Tawanda@epa.gov]
Subject: Re: R. Keigwin mentioned: Did you ever see this Beyond Pesticides petition re: 24(c)?

It was news to the AAPCO board too.

Rose

Sent from my iPhone

On Aug 11, 2021, at 5:41 AM, Maignan, Tawanda <Maignan.Tawanda@epa.gov> wrote:

Rose, Thanks for sharing – I was not aware of this petition.

*Tawanda Maignan
Emergency Response Team Leader
Office of Pesticide Programs
U.S. Environmental Protection Agency
(703) 308-8050*

From: Rose Kachadoorian <rkachadoorian@oda.state.or.us>
Sent: Tuesday, August 10, 2021 7:26 PM
To: Maignan, Tawanda <Maignan.Tawanda@epa.gov>
Subject: R. Keigwin mentioned: Did you ever see this Beyond Pesticides petition re: 24(c)?

Begin forwarded message:

From: Rose Kachadoorian <rkachadoorian@oda.state.or.us>
Subject: Your name mentioned: Did you ever see this Beyond Pesticides petition re: 24(c)?
Date: August 10, 2021 at 4:18:35 PM PDT
To: Richard Keigwin <Keigwin.Richard@epa.gov>

Begin forwarded message:

From: Rose Kachadoorian <rkachadoorian@oda.state.or.us>
Subject: Leo Reed, AAPCO Mentioned: Did you ever see this Beyond Pesticides petition re: 24(c)?
Date: August 10, 2021 at 4:17:21 PM PDT
To: Pat Jones <patrick.jones@ncagr.gov>, Leo Reed <reedla@purdue.edu>, Liza Fleeson Trossbach <liza.fleeson@vdacs.virginia.gov>, Amy Sullivan <aapco.sfireg@gmail.com>, Cary Giguere <cary.giguere@vermont.gov>, Megan Patterson <megan.l.patterson@maine.gov>, Gretchen Paluch <Gretchen.Paluch@iowaagriculture.gov>, Gary Bahr <GBahr@agr.wa.gov>, Tony Cofer <tony.cofer@aqi.alabama.gov>
Cc: Tom Gere <Tom.Gere@state.sd.us>, Anthony Lamanno <anthony.lamanno@dec.ny.gov>

Maybe this has been out a while, and I did not know it.
Rose

States -establish specific restrictions, on use of federally registered pesticide products, that go beyond the restrictions mandated by EPA.

<https://secure.everyaction.com/dh4IFWiE0SWIWxaHcAKPA2>

Stop EPA from Limiting State Pesticide Restrictions as Corporate Deception on Hazards Reported

The toxic herbicide dicamba is once again at the center of a larger story about states' authority to regulate pesticides more stringently federal dictates and a response to corporate corruption in the marketing of pesticide products. The Trump EPA (U.S. Environmental Protection Agency) has just made it much harder for state regulations to be more protective than federal rules. It did so via a footnote embedded in dozens of pages of regulatory documents related to EPA's registration of three new dicamba products.

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Meanwhile, a report by the Midwest Center for Investigative Reporting found Monsanto and BASF, a German chemical company that worked with Monsanto to launch the system coupling dicamba with resistant crops, knew their dicamba herbicides would cause large-scale damage to fields across the U.S., but decided to push them on unsuspecting farmers anyway, in a bid to corner the soybean and cotton markets with their dicamba-resistant seeds.

For nearly 30 years, state regulators have used Section 24 ("Special Local Needs" section) of FIFRA, the Federal, Insecticide, Fungicide and Rodenticide Act—the law that gives EPA authority to regulate pesticides—to establish specific restrictions, on use of federally registered pesticide products, that go beyond the restrictions mandated by EPA. Like other federal laws, FIFRA allows states room for stronger regulation. EPA has long allowed states to add to the edicts of federal pesticide labels in order to protect workers, crops, and/or the environment under particular local circumstances. However, Section 24 had historically been used to expand allowed labeled uses of pesticides when existing products with their crop restrictions are no longer effective.

Two subsections of Section 24 are at issue. Section 24(a) allows states to "regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act." Section 24(c) allows states to "provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator."

Although a straightforward reading of FIFRA leads to the conclusion—one that EPA is now supporting—that 24(a) should be used to limit a pesticide's use, and 24(c) to expand uses, EPA has never issued regulations or guidance for the application of 24(a) and has historically directed states to 24(c) when they sought to restrict a pesticide's use, as several states have done with dicamba. For several decades, EPA has construed 24(c) to mean that states can establish more-restrictive regulations than the federal. Indeed, in 1996, it published this as guidance for states. In the past few years, especially, as EPA has failed to enact constraints on the uses of dicamba, which has caused massive devastation to nontarget crops and trees (as well as to wildlife), many states have moved to establish additional controls on the pesticide's use.

Since EPA has never published regulations or guidance concerning use of Section 24(a), it is clear that the current action is designed to limit the ability of states to restrict the use of pesticides when EPA has failed to ensure safety.

A number of states, including Indiana, Minnesota, Missouri, South Dakota, North Dakota, Illinois, and Arkansas, have instituted restrictions on dicamba use that surpass those accompanying the federal registration of the compound. Texas, Iowa, Georgia, Kentucky, Alabama, and North Carolina are all eyeing 24(c) requests for stricter-than-federal controls for tighter application windows, additional training requirements, better record keeping, new fine structures for violations, and other modifications of the federal label.

This new (and stealthily announced) EPA impediment to states' ability to create additional constraints hinges on the agency's decision to reinterpret what states can do under Section 24(c) of FIFRA. EPA confirmed that the subject footnote represents an official policy change, saying, "EPA has determined that moving forward, EPA may disapprove any state registrations under FIFRA section 24(c) that further restrict use of pesticides registered by EPA, regardless of the chemicals involved. If a state wishes to further restrict use of a pesticide, they must do so under section 24(a) of FIFRA."

Although some have interpreted this change to mean that state regulators will now have to navigate state legislative or rulemaking processes to use Section 24(a) in order to enact such protections, EPA has not adopted regulations or guidance for implementation of 24(a), so it appears that it is up to states to decide how to use it, as with dicamba, to control the timing, nature, location, or quantity of applications of the pesticide in efforts to diminish the damage it causes to nontarget plants and organisms. In addition, this reversal by EPA overturns decades of precedent, and as *Progressive Farmer* reports, "breaks EPA's past promises to the states and threatens to damage the longstanding cooperative relationship between federal and state regulators."

Although EPA did foreshadow this change in March 2019, state regulators are feeling blindsided. Back then, EPA announced — during one wave of state additions to federal labels on dicamba — that it might alter its handling of states' requests to enact stricter controls, claiming that the actual language of 24(c) allows states only to permit additional uses of a federally registered pesticide.

EPA said at the time, "Due to the fact that section 24(a) allows states to regulate the use of any federally registered pesticide, and the fact that some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests." State regulators reacted to this announcement with great concern: officials from 10 different states urged EPA not to adopt the policy change, as did the National Association of State Departments of Agriculture and the Association of American Pesticide Control Officials (AAPCO).

Here's where the blindsiding arises: EPA Office of Pesticide Programs director Rick Keigwin said, alongside the 2019 announcement, that no changes would be made to the agency's 24(c) interpretation without the input of state regulators. "Before adopting any changes in this regard, we will solicit public comment on our proposed new approaches," he wrote in the spring and summer of 2019. "We look forward to a robust public dialogue with our stakeholders, partners and co-regulators on this matter."

But that did not happen, state regulators report. "There was no public comment period, no consultation," said Leo Reed, an Indiana pesticide regulator and president of AAPCO. The existing guidance on 24(c) remains on the EPA website, creating confusion and a "legal limbo" for state regulators. Brook Duer, a staff attorney at Penn State's Center for Agricultural and Shale Law, opined that even if the literal text of 24(c) comports with EPA's new interpretation, the decades-old, published interpretation and guidance represent a "binding norm" under federal administrative law. He commented: "So unilaterally reversing it through a footnote, without a more transparent and public process—like what EPA previously represented would be undertaken—is certainly unorthodox and may even create the basis for litigation to prevent the reversal."

Despite controversy over the rights of local governments to set stricter limits on pesticide use, there is not controversy over the legal rights of states to do so. In fact, some states—most notably California—have extensive pesticide regulatory programs. Since EPA has allowed the blatant abuse by Monsanto/BASF—in purposely using drift damage to force farmers to buy its seeds—states must be allowed to protect their citizens and environment when EPA fails.

>>Tell the Biden transition team that EPA must respect states' rights to protect people and property in their states.